

\*\*E-Filed 1/9/06\*\*

**NOT FOR CITATION**

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**SAN JOSE DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY, et al.,

Case Number C 04-4736 JF

## Plaintiffs,

**ORDER<sup>1</sup> DEFERRING RULING ON  
MOTION TO ENFORCE AND  
SETTING SCHEDULE FOR  
SUPPLEMENTAL BRIEFING**

BUREAU OF LAND MANAGEMENT, et al.

## Defendants

On November 28, 2005, Plaintiffs Center for Biological Diversity and California Native Plant Society filed a motion to enforce this Court’s order of October 28, 2005. Defendants Bureau of Land Management (“BLM”) and Mike Pool, State Director of the BLM for California, oppose the motion. Intervenors Salinas Ramblers et al. join in Defendants’ opposition. The Court heard oral argument on January 6, 2006.

At oral argument, Defendants represented to the Court that the Record of Decision (“ROD”) implementing the 2005 Biological Opinion (“2005 BO”) will be issued on January 13, 2006. Defendants represented that the issuance of the new ROD will have the effect of reducing

<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 open routes and barrens to only those that are currently signed open, which will significantly  
 2 reduce the miles of open routes and acres of open barrens. Relying on these representations, the  
 3 Court will defer ruling on Plaintiffs' motion to enforce until both the Court and the parties have  
 4 had an opportunity to review and comment on the ROD.

5 Plaintiffs filed the above-entitled action on November 9, 2004, alleging two claims for  
 6 relief against Defendants. As framed originally, these claims were (1) that Defendants are  
 7 violating the Endangered Species Act ("ESA") by failing to reinitiate consultation, and (2) that  
 8 Defendants are violating the ESA because their management of the Clear Creek Management  
 9 Area ("CCMA") jeopardizes the San Benito evening-primrose ("evening-primrose"). On March  
 10 28, 2005, Plaintiffs filed a motion for summary judgment. On April 29, 2005, Defendants filed a  
 11 cross-motion for summary judgment. On July 15, 2005, the Court issued an order stating that it  
 12 would defer ruling on the motions for summary judgment until after the Fish and Wildlife  
 13 Service ("FWS") issued an anticipated BO evaluating the effect of BLM's management of  
 14 CCMA on the evening-primrose. On September 2, 2005, FWS issued the anticipated 2005 BO.  
 15 Plaintiffs and Defendants subsequently filed supplemental briefs discussing the impact of the  
 16 2005 BO on the pending motions for summary judgment. On September 16, 2005, Plaintiffs  
 17 filed a motion for leave to file a supplemental complaint raising certain objections to the 2005  
 18 BO. On October 4, 2005, the Court issued an order dismissing Plaintiffs' first claim as moot,  
 19 deferring determination of Plaintiffs' second claim, and granting Plaintiffs' motion for leave to  
 20 file a supplemental complaint.

21 The motions for summary judgment on Plaintiffs' second claim are scheduled for hearing  
 22 at 9:00 a.m. on February 24, 2006. At that time, the Court will consider what impact the  
 23 issuance of the ROD based on the 2005 BO, which Defendants have represented will occur by  
 24 January 13, 2006, has on Plaintiffs' second claim. Parties shall submit supplemental briefing on  
 25 this issue in accordance with the following briefing schedule. Plaintiffs shall submit an opening  
 26 brief not later than January 27, 2006. Defendants shall submit an opposition brief, and  
 27 Intervenors may submit such brief as they deem appropriate, not later than February 10, 2006.  
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1 Plaintiffs shall submit a reply brief not later than February 17, 2006.

2 IT IS SO ORDERED.

3  
4 DATED: January 9, 2006

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7 /s/ electronic signature authorized

8 JEREMY FOGEL  
United States District Judge

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1 This Order has been served upon the following persons:

2 Michael Richard Eitel michael.eitel@usdoj.gov, wanda.davis@usdoj.gov;  
lisa.russell@usdoj.gov

3 Michael W. Graf mwgraf@aol.com,

4 Brian Litmans litmans@worldnet.att.net

5 Lisa Lynne Russell lisa.russell@usdoj.gov, deshonda.young@usdoj.gov

6 Paul Andrew Turcke pat@msbtlaw.com

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